

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1308

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

against

EUGENE COREY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

IRVING ANOLIK

Attorney for Defendant-Appellant

225 Broadway

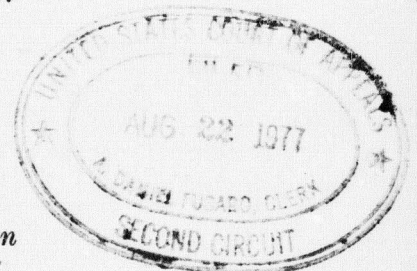
New York, N. Y. 10007

ROBERT B. FISKE, JR.

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District of New York*

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

-----X

UNITED STATES OF AMERICA,

Appellee,

-against-

EUGENE COREY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK.

-----X

DOCKET ENTRIES.

Barney-02, Krasner-03

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
1-27-77		Filed Indictment.....Pierce,J.	
2-3-77		Deft. (atty. Irving Anolik by Stanley Simon present) pleads not guilty. Bail fixed by Court at \$10,000 PRB. Deft. Ordered F/P. Bail limits extended to Florida. Case assigned to Motley,J. for all purposes.....Pierce,J.	
2-3-77		Filed notice of appearance of Irving Anolik as attorney for deft.	
2-3-77		Filed appearance bond in amt.of \$10,000 Unsecured..	
2-18-77		P/T CONF. HELD & CONCLUDED. Trial as to all defts adjourned to 4-18-77, 10A.M. MOTLEY,J	3-2-8-77 E-1
2-25-77		Filed statement and notice of motion for discovery and bill of particulars.....Ret.3-15-77....	
4-13-77		TRIAL ADJD TO 5-31-77, 10AM MOTLEY,J	
May 31-77		Govts motion to sever deft G.Barney-Granted...Jury trial begun as to Eugene Corey only..	
June 1-77		Trial cont'd.	
June 2-77		Trial cont'd.	
June 6-77		Trial cont'd.	

DOCKET ENTRIES

June 7, 1977 Trial cont'd. & concluded..Jury finds deft GUILTY on Cts. 1,2 and 7 P.S.I. ordered..Sent. adjd to 7-1-77 10 a.m. bail cont'd.....Motley,J.

June 8-77 Filed Govts memorandum of law in opposition to motion to dismiss count 7...

June 8-77 Filed Govts memorandum of law in support of proof of similar acts..

June 13-77 Filed Govt requests to charge...

June 21-77 Filed affdvt.& notice of motion seeking judgment of acquittal and arrest of judgment...

June 30-77 Filed Govt's affidavit in opposition to the motion of deft Eugene Corey asking the entry of judgment and acquittal and an arrest of judgment of conviction,etc.by John P.Cooney,Jr. AUSA.

June 30-77 Filed Memo Endorsed on Govt's affidavit filed 6-30-77..... Motion for judgment of acquittal and for arrest of judgment Denied.So Ordered.MOTLEY,J m-n and notified US Atty.

July 1-77 Filed Govts sentencing memorandum....

July 1-77 Filed Judgment (Atty.Irving Anolik,present) The defendant is committed for imprisonment for a period of ONE (1) YEAR on each of counts 1, 2 and 7 to run concurrently with each other.
SENTENCE OR PROBATION ORDER - Bail continued pending appeal. Defendant to surrender to U.S. Marshal TEN (10) DAYS after receiving Mandate from U.S.C.A. MOTLEY,J
Entered on - 7-1-77
Issued Commitment and Copies.

July 5-77 Filed NTOICE OF APPEAL of deft to USCA 2nd Circuit from judgment filed 7-1-77. COPY to attorney for deft. Irving Auolik,225 Broadway, NYC 10007 and COPY to U.S. Attorney.

JULY 15-77 Filed transcript of record of proceedings dtd: July 1-77.

A TRUE COPY

RAYMOND L. BURGHARDT, Clerk

By

Deputy Clerk

INDICTMENT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -X

UNITED STATES OF AMERICA,

- v -

EUGENE COREY, GEORGE BARNEY, and DONALD H. KRASNER,
Defendants.

77 Cr.

- - - - -X

The Grand Jury charges:

1. From in or about 1967 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, EUGENE COREY, the defendant, unlawfully, wilfully and knowingly did devise a scheme and artifice to defraud the Hartz Mountain Corporation and its shareholders, officers and directors of more than \$125,000 and to obtain money and property in the form of secret kickbacks by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice and attempting so to do, did transmit and cause to be

INDICTMENT

transmitted by means of wire communications in interstate commerce, signals and sounds, to wit telephone calls.

2. It was a part of said scheme to defraud that the defendant EUGENE COREY would and did utilize his official position as Vice President in charge of the Data Processing Department of Hartz Mountain Corporation to select the particular suppliers from whom Hartz Mountain purchased computer paper, commercial forms and other paper products.

3. It was further a part of said scheme to defraud that in or about 1967 the defendant EUGENE COREY began requesting secret cash kickbacks from George Barney, the President of Tabulating Stock Forms, Inc., in connection with purchases by Hartz Mountain of computer papers, stock forms and other paper products from Tabulating Stock Forms, Inc.

4. It was further a part of said scheme to defraud that in or about 1970, the defendant EUGENE COREY began requesting secret kickbacks from Donald H. Krasner, the President of Commercial Forms, Inc., in connection with purchases by Hartz Mountain from Commercial Forms, Inc., of computer paper, stock forms and other paper products.

INDICTMENT

5. It was further a part of said scheme to defraud that from 1967 through 1976 the defendant EUGENE COREY continuously received secret kickbacks on purchases by Hartz Mountain from Tabulating Stock Forms, Inc. and Commercial Forms, Inc., which kickbacks totaled more than \$60,000.

6. It was further a part of said scheme to defraud that the defendant EUGENE COREY would arrange periodic secret meetings with Barney at a railroad station in Scarsdale, New York, for the purpose of receiving cash kickbacks from Barney.

7. It was further a part of said scheme to defraud that the defendant EUGENE COREY arranged for Krasner to make kickback payments by writing checks to a business entity controlled by COREY called Data Con Co.

8. It was further a part of said scheme to defraud that the defendant EUGENE COREY arranged to have Barney and Krasner deliberately "short ship" on Hartz Mountain purchase orders so that in some instances Tabulating Stock Forms, Inc. and Commercial Forms, Inc. would only ship 50% of the quantity of commercial forms actually ordered and billed, causing Hartz Mountain to pay out more than \$125,000 for paper products it never received.

INDICTMENT

9. It was further a part of said scheme to defraud that the defendant EUGENE COREY deliberately concealed from and failed to disclose to the officers and management of Hartz Mountain Corporation the aforementioned secret kickbacks and short shipment.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT TWO

The Grand Jury further charges:

1. From in or about 1967 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, EUGENE COREY, the defendant, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud the Hartz Mountain Corporation, its shareholders, officers and directors, and to obtain money and property by means of false and fraudulent pretenses, representations and premises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the direction thereon, certain mail matter to be sent and delivered by the United States Postal Service.

INDICTMENT

2. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendant committed the offense charged in Count Two of this indictment.

(Title 18, United States Code, Section 1341 and 2.)

* * *

COUNT SEVEN

The Grand Jury further charges:

1. From in or about 1967 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, EUGENE COREY, the defendant, and George Barney and Donald H. Krasner, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of Sections 1341 and 1343 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendant EUGENE COREY and co-conspirators George Barney and Donald H. Krasner would and did devise and intend

INDICTMENT

to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and premises and for the purpose of executing said scheme and artifice to defraud and attempting so to do would and did place and caused to be placed in post offices and authorized depositories for mail matter and would and did cause to be delivered by mail according to the direction thereon certain mail matter to be sent and delivered by the United States Postal Service.

3. It was further a part of said conspiracy that the defendant EUGENE COREY and co-conspirators George Barney and Donald H. Krasner would and did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice and attempting so to do, would and did transmit and cause to be transmitted by means of wire communications in interstate commerce, signals and sounds.

4. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendant and co-conspirators committed the offense charged in Count Seven of this indictment.

9a

JUDGMENT.

United States of America vs.

United States District Court for

DEFENDANT

THE SOUTHERN DISTRICT OF NEW YORK

EUGENE COREY

DOCKET NO. 77 Cr. 54 (CBM)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
JULY	1	1977

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

IRVING ANOLIK, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of mail fraud and wire fraud and conspiracy so to do as charged in counts 1,2 and 7.
Title 18, USC., Sections 1341, 1343 and 371.

10a

JUDGMENT

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 1,2 and 7 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

Bail continued pending appeal.
Defendant to surrender to U.S. Marshal TEN(10) DAYS after receiving
Mandate from U.S.C.A.

SPECIAL
CONDITIONS
OF
PROBATION

A TRUE COPY
RAYMOND E. BURGHARDT, Clerk

By M. Gail
Deputy Clerk

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

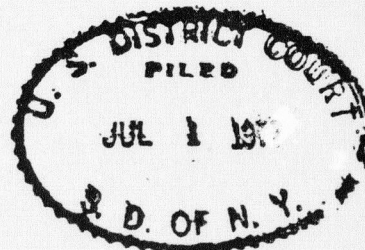
The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

MICROFILM

JUL - 5 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.



SIGNED BY

☒ U.S. District Judge

CONSTANCE BAKER MOTLEY

☐ U.S. Magistrate

Constance Baker Motley

Date

7/1/77

EXCERPTS FROM TRANSCRIPT.

1 hb:mg 7

Corey - cross

434

2 head in Hartz signs their invoices.

3 Q There may be a difference between you and
4 others, though, Mr. Corey.

5 MR. ANOLIK: I object. There is no testimony
6 as to that.

7 THE COURT: Yes, sir.

8 Q Mr. Corey, you signed those invoices author-
9 izing payment, correct?

10 A Yes.

11 Q So would you agree with me as your counsel
12 asked you, that the question here is whether or not you
13 knew at the time you took these actions that there were
14 short shipments, that there was a scheme to defraud
15 Hartz, would you agree with that?

16 A I did not know that at all.

17 MR. COONEY: Your Honor, may we approach
18 the side bar for a moment?

19 (At the side bar)

20 MR. COONEY: Your Honor, would you ask the
21 witness to step down?

22 THE COURT: Yes.

23 MR. COONEY: Your Honor, it is clear that the
24 central issue of this case is now the knowledge of Mr.
25 Corey at the time he made the particular actions.

1 hb:mg 8

Corey-cross

2 For the purpose of establishing his knowledge
3 and his intention, I intend to ask him questions about
4 similar acts.

5 The first one of those acts will be that in
6 1960 he was employed by the Columbia Broadcasting System
7 in charge of their computer.

8 He was dismissed for cause from Columbia
9 Broadcasting System because it was found that by using
10 false documentation, which he himself created through
11 their computers, he changed the amount of overtime paid
12 that was to be paid to him.

13 He additionally changed the amount that was
14 reflected on his W-2 form.

15 This was discovered by the auditors at CBS
16 and he was terminated.

17 I am prepared in rebuttal, if this is not ad-
18 mitted, to call one of the men at CBS who was present
19 when Corey admitted these actions and who physically ac-
20 companed Corey out of the building.

21 I also intend to question Mr. Corey about
22 the fact that while he was employed by the Hartz Mountain
23 Corporation, he had entered into agreement with this
24 company RPC by which he would use the Hartz computers to
25 run business for RPC, that money he would then be paid

1 hb:mg 9
2 half of the billing by RPC to Data Con, and none of that
3 money was ever paid to Hartz.

4 In effect, what he was doing was stealing time
5 on Hartz computers.

6 There was mention of this in direct examination
7 so I think it is clearly admissible anyway.

8 I am in the process of reaching Mr. Leonard
9 Stern, the executive officer of Hartz, who I expect will
10 be available this afternoon or a little later this morn-
11 ing, to testify that he never knew and never consented
12 to this procedure.

13 It is very clear, your Honor, that these are
14 similar acts, that knowledge has been put into question
15 here and the law of the circuit, as the Court is familiar
16 with, and I have a brief if the Court feels it helpful,
17 the law of this circuit is clear that similar acts may
18 be introduced on the issue of knowledge; that the Court
19 merely must make a balancing consideration of the proba-
20 tive value versus the prejudicial value, but I must alert
21 the Court to this.

22 Most of those cases had to do with similar
23 acts introduced in the direct case. Once the defendant has
24 in fact taken the stand and put in his case, and put in the
25 issue of knowledge, as so clearly this man did, the

hb:mg 10

Corey-cross

437

1 probative value, the entire standard we suggest on the
2 basis of the Leonard case that is cited here, and the
3 others and the Kaufman case is lower, and regardless, these
4 acts should be examined. This man should be examined on
5 his knowledge of these acts.
6

7 We have no objection, I might say, your Honor,
8 that on this part of the examination I have no objection
9 to the Court instructing the jury that these facts are
10 being elicited on the issue of knowledge only.

11 THE COURT: We are going to take a recess.

12 (In open court)

13 THE COURT: We will take a recess at this
14 time. The jury is excused. Everyone in the courtroom
15 remain seated until the jurors have left.

16 (The jury left the courtroom)

17 THE COURT: Suppose we continue this in the
18 robing room.

19 (In the robing room)

20 MR. COONEY: Your Honor, here is a copy of the
21 memorandum.

22 (Pause)

23 THE COURT: You want to be heard on this?

24 MR. ANOLIK: Yes, your Honor.

25 First of all, I think this is a very questionable

1 hb:mg 11

Corey-cross

438

2 tactic. I asked Mr. Cooney on a number of occasions
3 whether he intended to go beyond his employment at Hartz.

4 While it is true Mr. Cooney was a little
5 equivocal, he indicated to me that he would not go beyond
6 Hartz.

7 I think, your Honor, that this is in the nature
8 of a trial by ambush and I object to it for that reason.
9 This is 16 years ago. I don't know the circumstances of
10 this event, your Honor, to any great extent, but on some-
11 thing that is 16 years old, it should not be sprung.

12 THE COURT: Are both events 16 years old?

13 MR. ANOLIK: No, I am not even talking about
14 the other event. The other event, your Honor, I was
15 aware of and I don't care if he goes into that or not.

16 MR. COONEY: Your Honor, may I just say --

17 MR. ANOLIK: But the situation at CBS, which
18 is more than 16 years old, I think is grossly unfair, your
19 Honor, under the traditional rules in this circuit, even
20 a conviction that was more than ten years old ordinarily
21 would not be gone into, your Honor, and I just don't see
22 the Luck doctrine and those doctrines, I just don't see
23 why at this time Mr. Cooney should be permitted to suddenly
24 spring something like this without any hint whatsoever that
25 he intended to do it either to the Court or to defense

1 hb:mg 12

Corey-cross

2 counsel.

3 THE COURT: Let me ask you about the second
4 incident here which is later in time, I gather.

5 The RPC matter. When did that occur, 1974?

6 MR. COONEY: 1974 to 1976, your Honor.

7 Can I just correct the record on several
8 things? Mr. Anolik has asked me several times whether
9 there is any crime that this man has committed ever.

10 I have told him no.

11 He has asked me whether there is anything
12 about the background.

13 I alerted him on Friday specifically to ask
14 this man about what else he was doing at Hartz Mountain.
15 I would be willing to bet now that it was after that
16 alerting that this RPC or Data Con computer transaction
17 came out.

18 The intimation that Mr. Anolik ever asked me
19 about this man's employment prior to his employment with
20 Hartz Mountain is absolutely false, I am sorry to say.

21 THE COURT: Just a moment.

22 MR. ANOLIK: I beg your pardon.

23 THE COURT: I didn't get that. Read that
24 back.

25 (Record read)

1 hb:mg 13

Corey-cross

2 MR. COONEY: Let me just finish. I did not
3 interrupt you, Mr. Anolik.

4 MR. ANOLIK: I am sorry.

5 MR. COONEY: Your Honor, with respect to trial
6 by ambush, there is absolutely no question that this man
7 voluntarily took the stand. The information that we have,
8 if Mr. Anolik did not know about this, there is only one
9 person to blame and that is this man who has come on to
10 the stand voluntarily, to sell this jury on his clean
11 background. There is no ambush occurring here.

12 On the issue of remoteness, there are cases
13 in this district, the only one I was able to find this
14 weekend, I will be frank to say, your Honor, was the
15 Magnonno case, the only case I could find on the issue
16 of remoteness in similar acts was the Magnonno case
17 where similar acts were introduced involving crimes oc-
18 ccurring in 1959, a similar act to a crime occurring in
19 1973. According to my calculation, that is 14 years, your
20 Honor.

21 Those were similar acts introduced in the
22 direct case. Those were introduced before the issue of
23 knowledge/intent was ever put in question.

24 I have been unable to find, frankly, any case
25 where there has been an issue of remoteness once the

1
2 defendant has taken the stand.

3 Finally, your Honor, you will recall that
4 Mr. Barney's testimony is that this man began to defraud
5 Hartz Mountain by use of payments, kickbacks, as early as
6 1965 and 1966.

7 This act then occurs within five or six years
8 of the beginning of the conspiracy in this case.

9 Even if there were a remoteness standard and
10 I frankly don't believe there is a remoteness standard
11 once the defendant has taken the stand.

12 This CBS act, which we consider most probative
13 would clearly meet any remoteness standard--

14 MR.ANOLIK: Your Honor, I regret that Mr.
15 Cooney has to characterize something I say as false. I
16 certainly never make statements knowingly false, your
17 Honor.

18 I asked Mr. Cooney on at least four occasions,
19 as I am sure he recalls, whether any other crime -- I am
20 not talking about a conviction now -- any other crime was
21 committed by my client and he said "No."

22 If he wants to use crime or conviction, maybe
23 that was a mix-up in his head, but I was trying to get at
24 something because of the fact that your Honor -- I happened
25 to have the Baum case, U.S. v. Baum, where the Court of

1 Appeals reversed the district court because it permitted
2 trial by ambush in a particular case.

3
4 THE COURT: Involving similar acts when you
5 say trial by ambush?

6 MR. ANOLIK: A similar act within a period
7 of limitations or maybe within the period of conspiracy
8 even I could understand, but something antedating that,
9 your Honor, to me is just outside fundamental fairness.
10 It is outside the ability of a man to even cope with, your
11 Honor, without any hint.

12 THE COURT: I am trying to understand what
13 you mean by the term "trial by ambush."

14 Do you mean surprise?

15 MR. ANOLIK: Surprise in the sense of no fore-
16 warning, because I would have asked for a ruling from
17 your Honor if Mr. Cooney had told me he was going into
18 something like this. We know there is an obligation that
19 where there is a conviction, he must notify us. We know
20 that.

21 However, your Honor, this is now just cutting
22 it a little bit too thin in the sense that Mr. Cooney, I
23 am sure, got the drift of what I was asking him. Maybe
24 I was not articulate enough to pinpoint it, but I am
25 always concerned when a man takes the stand about surprises.

1 hb:mg 16
2 I think that we don't try cases any more by
3 surprises, your Honor. I don't think it is proper to
4 try cases in that manner.

5 I asked my man about everything he did at
6 Hartz, I knew about the RPC and I am prepared for it. I
7 didn't go back beyond 16 years, I saw no point in going
8 back beyond that, your Honor. And whether or not my
9 client will even-- I have not asked my client about this
10 in deference to Mr. Cooney's request that I not, but the
11 point is, I don't even have any background in it, your
12 Honor, and I think that I am entitled to at least know
13 what is going on, as I say, with respect to something
14 of this sort before I even put a man on the stand.

15 MR. COONEY: Let me just say this. On the
16 Baum case, as I am sure Mr. Anolik knows, there was a
17 request before trial for a list of witnesses in that
18 case, the addresses of the witnesses.

19 The government did not supply to the defense
20 in that case the name of a similar acts witness who was
21 put in as part of the direct case.

22 Judge MacMahon was presiding, it was a one-
23 day trial. There was a request when the similar act
24 witness went on the stand, there was a request for adjourn-
25 ment.

1 hb:mg 17

Corey-cross

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2 The judge said, "Do you have this similar acts
3 witness' rap sheet?"

4 The defense said, "Yes, Judge."

5 Judge Mac Mahon said that is enough. The Court
6 of Appeals reversed that on one basis. And that was that
7 when there was a similar act in that circumstance, when
8 there had been a specific request for witnesses' names
9 and that had been granted, and there was a request for
10 an adjournment, Judge MacMahon, in a one-day trial, should
11 have given the defendants an adjournment and that was the
12 issue, is that not correct in that case?

13 MR. ANOLIK: It was an Agent Greenhull.

14 MR. COONEY: In any case that was a direct
15 request, where there had been a request for witnesses and
16 the only issue is whether an adjournment could have been
17 had.

18 I am adamant about this abmush routine, your
19 Honor. Mr. Anolik implies that the government has an
20 obligation to tell him what his client either did not or
21 his client was not asked. I don't know of any such
22 obligation.

23 Several times I alerted Mr. Anolik in every
24 way I knew how, except to tell him precisely what was
25 going to happen, that if his man took the stand, it was

hb:mg 18

Corey-cross

445

1
2 going to be heated and if he didn't inquire as to what
3 this man did one month, one month before he came with
4 Hartz Mountain, I don't see that that is ambush by the
5 government.

6 I just can't understand this contention of
7 ambush, to be quite frank.

8 MR. ANOLIK: Your Honor, I wonder why, and I
9 think Mr. Cooney will agree that I asked him not once
10 but several times, whether there was anything in this man's
11 background that smacked of criminality.

12 I may not have used those specific words.

13 MR. COONEY: You certainly did not.

14 MR. ANOLIK: But you know what my concern was.
15 I was very concerned with his background, is that true?

16 MR. COONEY: You asked me several times, as
17 best I recall, whether this man had ever committed a
18 crime, whether he had been convicted, that type of thing,
19 and I told you that there were no convictions, and I
20 alerted you on several occasions.

21 Last Friday was the last one, that you should
22 inquire into his background, that you should especially
23 inquire into what happened at Hartz.

24 Your Honor, I am prepared, as I say.

25 THE COURT: What happened at Hartz?

hb:mg 19

Corey-cross

446

1 hb:mg 19
2 MR. COONEY: Yes, your Honor, that was this
3 RPC.

4 THE COURT: Not CBS?

5 MR. COONEY: I did not tell him specifically
6 about Columbia at that time.

7 MR. ANOLIK: Your Honor, Mr. Cooney has cor-
8 rectly stated in substance that I did ask him about
9 crimes, convictions, and I consider what happened at CBS
10 a crime, your Honor. I think I should have been alerted
11 to it. If for any reason I was not as articulate, I got
12 a negative answer now, as I can see it. It is true,
13 he now, as I recall, he had never been convicted.

14 Now, your Honor, I just assumed that to mean
15 he had never committed any other crime. I was aware of
16 what had occurred at Hartz, he told me he had authority
17 to do this. I am prepared for that.

18 This Columbia business comes like a bolt out
19 of the blue, your Honor, and I think it is just fundamental-
20 ly unfair in view of the fact that I made such searching
21 inquiry of Mr. Cooney and it is true maybe I didn't articu-
22 late myself properly, Mr. Cooney.

23 If I had asked you specifically about CBS,
24 would you have told me about it?

25 MR. COONEY: I would have told you to inquire of

hb:mg 20

Corey-cross

447

1
2 your client.

3 MR. ANOLIK: Why did you direct me to a point
4 in time then? I concentrated entirely upon Hartz, your
5 Honor, the framework of this indictment.

6 Why should I have to go back now over 16 years
7 and inquire of a client?

8 MR. COONEY: Because, frankly, your Honor,
9 because that is Mr. Anolik's job, before he puts a man on
10 the stand. This man has presented himself in what we
11 consider to be a fraudulent manner to this jury.

12 A month after he is fired from one company, he
13 goes to another company and shortly thereafter, within
14 five years, he is selling that company down the river.

15 MR. ANOLIK: If you believe the testimony.

16 MR. COONEY: He then takes the stand and pre-
17 tends that he didn't know about what went on, it was his
18 underlings or people above him.

19 If there is any ambush, it is allowing or
20 putting a man on the stand like that to make that type
21 of presentation when he knows that the month before he
22 took this job that he has described, that he was kicked
23 out of another company for defrauding them.

24 THE COURT: The company that hired him, then,
25 Hartz, they didn't investigate his prior job?

1 hb:mg 21

Corey-cross

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2 MR. COONEY: No, your Honor. I think we are
3 prepared to show, he said that he was referred to them
4 by this Univac salesman Halliday.

5 I think that we will find that the man who
6 referred Corey to Hartz is the man who is now involved
7 with Corey on this RPC-Data Con similar act that is de-
8 scribed.

9 I believe that it is the exact same man. He
10 was placed in Hartz as a replacement by Mr. Halliday who
11 is now using Corey to do Halliday's work on the Hartz
12 computers and share the profits with Corey.

13 THE COURT: You are saying Halliday was the
14 one who recommended Corey to Hartz?

15 MR. COONEY: That is what Mr. Halliday has
16 told us. And Mr. Corey on the stand says that a Univac
17 salesman -- and that is what Halliday was at that time --
18 recommended or got him his job at Hartz.

19 Halliday has previously told us that he had
20 gotten Corey his job at Hartz, without references, appar-
21 ently.

22 MR. ANOLIK: Your Honor, I think that at the
23 very least Mr. Cooney should have come to your Honor in
24 camera and told your Honor that this issue would come
25 up. Not in the middle of cross-examination so suddenly

hb:mg 22

Corey-cross

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1
2 sprung it upon your Honor and me that that is going to
3 come up when he obviously knew it was going to come up,
4 because I announced in advance that my client would take
5 the stand, your Honor.

6 So this was no surprise to anyone.

7 Your Honor will recall, I announced, perhaps
8 on Thursday, that I intended to put my client on the
9 stand, your Honor. I did not play a cat and mouse game
10 with the government at all and as I say to now suddenly
11 spring this, I think is fundamentally unfair, when it
12 goes back over 16 years.

13 If he wants to bring in RPC, I can deal with
14 that, your Honor, and I am just saying if it is a tactic
15 that the government wants to use, I think that tactic
16 should be discouraged, your Honor.

17 THE COURT: Let me ask you this. Are you
18 familiar with any Second Circuit cases which rule out
19 prior similar acts on the ground of time?

20 MR. ANOLIK: Your Honor, I know that there are
21 cases that rule out any sort of crime, be it similar act
22 or otherwise, if it is over ten years old, if in the
23 discretion of the Court, the Court does not want to admit
24 it. That evolves from the U. S. v. Luck and that whole
25 progeny of cases.

1
2 THE COURT: I don't have that in mind. I
3 know that is now in the rules, I believe, the Rules of
4 Evidence.

5 MR. ANOLIK: That is correct.

6 THE COURT: I am talking about prior similar
7 acts.

8 MR. ANOLIK: Your Honor, I cannot independently
9 think of a case as such. This comes to me as a bolt out
10 of the blue.

11 MR. COONEY: Your Honor, obviously we have no
12 problem with an instruction that this does not go to
13 impeachment, this goes strictly to whether he knew what
14 was going on and that is obviously the difference between
15 remoteness in the impeachment area and remoteness in the
16 similar acts area.

17 MR. ANOLIK: I would have to ask for a continu-
18 ance to look into this matter. I have no knowledge of it.
19 I would have to send out my investigator to check into
20 it. I can't even cope with this, your Honor. I think
21 this should have been called to your Honor's attention at
22 the very least.

23 MR. COONEY: I will be glad to put on the
24 record -- I talked to several people in my office this
25 weekend when it was clear this man was taking the stand,

1 jhb:mg 24

Corey-cross

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2 and it was also clear that his story would be as it has
3 developed during cross that he did not know, on whether
4 it would be proper for us to submit to the Court in
5 camera information on prior similar acts.

6 The general feeling in the office was given
7 the context of this case that that would not be proper.
8 That when it was raised, if the issue came out as it so
9 clearly did on cross-examination, it would have to be
10 raised and litigated then.

11 I apologize, I understand this puts some pres-
12 sure on the Court, I apologize to Mr. Anolik in the
13 general sense. Mr. Anolik and I have a very distinctly
14 different recollection of our prior conversations.

15 MR. ANOLIK: I really don't think it is that
16 different. I think that we both-- Mr. Cooney was aware
17 of the fact that I was concerned about this man's back-
18 ground in the event there was something I should know.

19 MR. COONEY: And I alerted you on more than
20 one occasion.

21 THE COURT: Just a moment now. You are inter-
22 rupting one another.

23 MR. COONEY: I am sorry, your Honor, and--

24 MR. ANOLIK: But as I understood your responses,
25 your responses were with respect to Hartz. I went over

hb:mg 25

Corey-cross

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2 the Hartz matter, I just couldn't conceive of anything
3 beyond 16 years, even being relevant.

4 THE COURT: Yes.

5 What I am going to do is to let the govern-
6 ment proceed with the RPC matter, but reserve decision
7 with respect to the Columbia Broadcasting System matter,
8 because I would like to review the cases on prior similar
9 acts, see whether time is a consideration, as in the
10 case of a prior conviction more than ten years old.

11 I believe that a memorandum in my chambers
12 which covers that question -- I could review that during
13 the lunch hour. So suppose we proceed. We have a half
14 hour before lunch -- we can proceed with the defendant
15 now on the stand and go into the RPC matter, and I will
16 charge the jury that they are to consider this evidence
17 on the issue of knowledge and intent of the defendant
18 only.

19 MR. ANOLIK: Thank you, your Honor.

20 THE COURT: We will see about the other later.
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22
23
24
25

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Corey - cross

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(In open court with the jury present.)

3

BY MR. COONEY:

4

Q Now, Mr. Corey, you mentioned that when you

5

came to Hartz Mountain you were recommended by a Univac

6

salesman.

7

A Yes.

8

Q What was his name?

9

A I really have no way of knowing.

10

Q Was it William Halliday?

11

A No.

12

Q You told us during your direct examination

13

that you did some business with this company Data Con with

14

a company called RPC; right?

15

A I haven't mentioned that, no.

16

Q Did you do some business with a company called

17

RPC?

18

A Yes.

19

Q Who owns RPC; do you know?

20

A William Halliday.

21

Q As I understand it, the services you did for

22

RPC would be that they needed some computer services; is

23

that right?

24

A He needed a help on certain jobs.

25

Q The answer then is yes; I take it?

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A Yes.

Q One of the jobs he needed help on was the
New York Academy of Science; is that right?

A Yes.

Q And you knew Mr. Halliday's computer equipment
was very, very unsophisticated; correct?

A True.

Q And Hartz had fairly sophisticated computer
equipment; correct?

A Yes.

Q So during the years 1974 and 1975 and 1976
he brought Data Con some computer jobs to be done;
correct?

A Correct.

Q And the job for the New York Academy of
Science was one of them; right?

A Right.

Q And how about Grand Jewel; do you remember
working for Grand Jewel?

A For a very short period of time.

Q And Mr. Halliday or RPC would then bill these
companies, New York Academy of Sciences and Grand Jewel;
correct?

A Right.

cs3

Corey - cross

Q And half of the billings for this service would be paid to you; correct?

A I don't know the percentage of what I got, but I know I got a percentage of it.

Q Do you recall that in the year 1974 you were paid \$5579.24 by RPC?

A I don't know how much they paid me, but they did pay me a certain amount.

Q Do you recall that in 1975 you were paid \$5875.45 by RPC?

A That is possible.

Q Do you recall that in 1976 you were paid \$3323.16 by RPC?

A Possible. I don't remember the exact sums, but it is possible.

Q Let me show you what will be marked as Government's Exhibits 49, 50 and 51.

(Government's Exhibits 49, 50 and 51 marked identification.)

MR. ANOLIK: Maybe we can stipulate this.

MR. COONEY: Do you want your client to join you?

MR. ANOLIK: It is up to you. Maybe I can. Maybe we can save some time, your Honor.

xx

cs4

Corey - cross

456

(Pause.)

MR. ANOLIK: Your Honor, we have no objection to this.

THE COURT: Very well, they may be marked.

(Government's Exhibits 49, 50 and 51 received in evidence.)

Q RPC stands for Record Process Corporation; is that right?

A Yes.

(Mr. Cooney read from Government's Exhibits 49, 50 and 51.)

MR. COONEY: Perhaps we can stipulate the amounts during the break, your Honor.

Q Now, these checks were paid to Data Con for running computer work for RPC; isn't that right?

A Yes.

Q And the computer program that is the basis for these checks to actually run the machine was provided to you by RPC; isn't that correct?

A Yes.

Q Where did you get the paper?

A RPC.

Q So over a three-year period you were paid, would you agree with me, if the amounts are right,

cs5

Corey - cross

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1
2 \$14,700 basically for the use of Hartz Mountain computers;
3 correct?

4 A For computer time, yes.

5 Q That is what RPC was paying for?

6 A Right.

7 Q By the way, would you get these checks in the
8 mail?

9 A Yes.

10 Q Would you send an invoice or anything to RPC
11 in the mail?

12 A No.

13 Q It was just Mr. Halliday and you would discuss
14 it on the telephone?

15 A Or in person.

16 Q But I take it Mr. Halliday in New York and
17 you in New Jersey would have telephone conversations about
18 these?

19 A Oh, yes, we had some.

20 Q And the computer you used for this work, this
21 \$15,000 worth of work, were Hartz Mountain computers;
22 right?

23 A Yes.

24 Q And you told us that Leonard Stern was aware
25 of this?

1
2 A Of this specific one, yes. This one was
3 the first one I ever did with RPC.

4 Q Mr. Stern was aware that Data Con was using
5 the Hartz Mountain computers to do outside work?

6 A That Eugene Corey.

7 Q That Eugene Corey was using the Hartz Mountain
8 computers to do outside work?

9 A Yes.

10 Q And the reason you work that Mr. Stern knew
11 that is you told him that; correct?

12 A That is right.

13 Q I take it had you not told Mr. Stern that you
14 were using these computers you would agree with me that
15 you have been defrauding the company; is that correct?

16 MR. ANOLIK: I object to that as being
17 argumentative.

18 THE COURT: Read the question.

19 (Question read.)

20 THE COURT: Overruled.

21 A I'm sorry?

22 Q Did you hear the question, Mr. Corey?

23 A No.

24 THE COURT: Read it again.

25 (Question read.)

cs7

Corey - cross

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2 A I don't know if I felt that way, but I would
3 have asked him anyway. I don't know --

4 Q If you were using Hartz Mountain's resources
5 to make money for you personally, do you feel if in this
6 situation you would have been committing a fraud on the
7 company?

8 MR. ANOLIK: I object to this line of question-
9 ing. He is asking for a legal opinion of the witness.
10 I think the witness should be permitted to consult with
11 counsel. He is asking for a legal conclusion.

12 MR. COONEY: It is a speech, not an objection.
13 This is something that they have made the central issue
14 and I'm asking the man if he knows whether or feels he
15 would have been defrauding the company.

16 MR. ANOLIK: The central issue will be framed
17 by your Honor in the charge. I am merely saying it is
18 unfair to ask a layman for a legal conclusion.

19 THE COURT: You can put it in non-legal
20 language.

21 MR. COONEY: Okay.

22 Q Do you think it would be honest for an
23 employee to use his company's resources like computers
24 secretly to make money for that employee?

25 MR. ANOLIK: During non-computer hours.

1 He didn't add that.

2 THE COURT: During what?

3 MR. ANOLIK: Non-computer hours.

4 MR. COONEY: Mr. Corey told us, your Honor,
5 that the computers were running 24 hours a day. I don't
6 know what Mr. Anolik means.

7 MR. ANOLIK: He said except during the change
8 or between shifts.

9 Q Let's say between computer hours -- do you
10 think that would be an honest thing to do, Mr. Corey?

11 A The way you put it, no.

12 Q Basically the question is if Hartz Mountain
13 wanted to make money by renting their computer time they,
14 the corporation, would have made that \$15,000; right?

15 A True.

16 Q But in fact you made that \$15,000; right?

17 A True.

18 Q And you are telling us that Mr. Stern, the
19 chief operating officer of the company, knew about it
20 because you told him you were using them?

21 A I asked him whether I could use the hardware
22 to help ou RPC on this job.

23 Q On this \$15,000?

24 A Not on the \$15,000, because at the time I
25

cs9

Corey - cross

asked his permission there had been no payment made.

It started out very, very small.

Q The only real question is this:

You got, you received the approval of the chief operating officer of the company before you conducted this business with RPC?

A Yes, for each occasion. I had other occasions where I was using the hardware also.

MR. COONEY: Your Honor, subject to the other matter, I have no other questions.

THE COURT: Then we will recess early for lunch today.

We are going to recess now until 1.45.
The jury is excused.

(The jury left the courtroom.)

THE COURT: Before you proceed, Mr. Anolik and Mr. Cooney, the witness in reply to a question put to him leads me to believe that he received permission of Mr. Stern before using the company's machinery for RPC.

MR. COONEY: That is what Mr. Corey has testified to, your Honor, and that is contrary to our understanding. We expect to be able to prove it.

MR. ANOLIK: I merely wanted to have your Honor's permission during the luncheon recess to discuss

1 cs10

Corey -

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2 this other matter that came up so at least I can orient
3 myself with my client.

4 THE COURT: Yes, you can, and I am going to
5 check the law, as I indicated, with respect to the Court's
6 discretion.

7 MR. ANOLIK: Thank you very much.

8 (Trial adjourned until 1.45 p.m.)

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AFTERNOON SESSION

1:45 p.m.

(In the robing room)

THE COURT: Gentlemen, first of all, with respect to the motion made by the defendant at the end of the government's case to dismiss the conspiracy count, the Court's ruling is that this case is similar to U. S. v. Sir Kue Chin, which is a case relied upon by the government in its memorandum of law in which the Court found that there was only one conspiracy there involving the appellant who had been charged with conspiracy to sell heroin and who dealt with two separate sources of supply.

In that case, the Court pointed out there was only one defendant on trial; the situation here is similar, although there are two others named as defendants and not on trial, and it seems to me that the fact that the defendant may have dealt with two separate customers or suppliers of materials cannot possibly make it two separate conspiracies.

So the motion to dismiss the conspiracy count is denied on the ground that the evidence does not show two separate conspiracies. It shows a single defendant who dealt with perhaps more than one supplier of materials and who allegedly gave him kickbacks.

1
2 With respect to the prior similar acts matter,
3 when I go out, I will charge the jury that the evidence
4 which it has just heard relating to the RPC Company is
5 to be considered by them only on the issue of the defend-
6 ant's knowledge and intent with respect to the instant
7 charges.

8 With respect to the Columbia Broadcasting
9 Company matter, the Court has reviewed the cases in the
10 Second Circuit on this matter, and time is an element
11 to be considered, just as in the case of an old convic-
12 tion.

13 The Court may in its discretion preclude evi-
14 dence regarding a conviction which is more than ten
15 years old.

16 The same applies to a prior similar act.

17 Now, the act in question here I gather goes
18 back 16 years when Mr. Corey was first employed by Hartz
19 Mountain and involved, again, it was falsification of
20 his own individual employment record with respect to
21 overtime and what else?

22 MR. COONEY: Overtime and his W-2 form, your
23 Honor.

24 THE COURT: His W-2 form.

25 Those acts, of course, were similar in that

1 they would have been acts which if the jury believed them,
2 defrauded the company.
3

4 It seems to me that with respect to both these
5 acts, one we have just heard and this 16-year old act, the
6 issue or the testimony is whether this evidence is so
7 prejudicial as to outweigh its probative value.

8 With respect to that, and both of these offers
9 by the government, the Court finds that the evidence is
10 not so prejudicial as to outweigh its probative value
11 because of the strength of the government's case against
12 the defendant here.

13 In this case, the government has two witnesses,
14 both of whom have testified that the defendant received
15 from them kickbacks in connection with purchases made
16 by him from them.

17 Of course, if the jury believes the testimony
18 of those two witnesses, it is certainly sufficient to
19 convict this defendant quite aside from any prior similar
20 act testimony.

21 So that in a case where the government's case
22 is fairly strong against a defenant, that is, where the
23 government's evidence alone, quite aside from these prior
24 similar acts, is sufficient to convict the defendant, the
25 Court finds that the probative value of these two acts is

2 not outweighed by any pre- icial value that the acts might
3 have.

4 With respect to the time element and the
5 Columbia Broadcasting Company matter, the Court finds
6 that although 16 years is a long time, relatively speak-
7 ing, at the time the act was committed, the defendant was
8 a mature man. It is not a situation where he was a young
9 person committing his first offense, he was not 21 years
10 old or anything of that kind.

11 Therefore, the Court feels that despite the
12 time period of 16 years, that the government should be
13 permitted to offer evidence on that question.

14 With respect to your suggestion, Mr. Anolik,
15 that it is a kind of surprise, I think the government is
16 correct that this was something which would have been
17 in the knowledge of the defendant, and which he probably
18 should have disclosed to you when you questioned him about
19 taking the witness stand.

20 So that it cannot be properly characterized
21 as surprise, something which the defendant would have
22 firsthand knowledge of.

23 So with those rulings, I think we will now
24 proceed.

25 MR. ANOLIK: Thank you, your Honor.

2 (In open court, jury present)

3 THE COURT: Before proceeding, I would like to
4 give the jury a special instruction at this time.

5 You recall that before the luncheon recess
6 the government lawyer had questioned the defendant con-
7 cerning his activities in connection with a company
8 called Records Production Company?

9 MR. COONEY: RPC, your Honor.

10 THE COURT: RPC, while the defendant was
11 employed at Hartz Mountain.

12 With respect to that testimony, I want to point
13 out first, that the defendant is not charged in this
14 indictment with any misconduct in connection with that
15 activity. It is up to you to find if those activities
16 actually occurred as claimed by the government.

17 If you so find, then the instruction is that
18 you can consider that evidence relating to the RPC only
19 in connection with your deliberations regarding this
20 defendant's knowledge of what occurred with respect to
21 the charges made against him in the instant indictment;
22 that is, whether he knew that the shipments had been
23 short-shipped as charged by the government in the indict-
24 ment.

25 As to that issue, you may consider this evidence

1 of a prior similar act or a contemporaneous similar act
2 which the government claims this RPC evidence represents.
3

4 The government's claims that the defendant
5 committed a similar act with relation to RPC, and you
6 can consider that prior similar act evidence only on the
7 issue of this defendant's knowledge as to the charges
8 made in this indictment, that is, that he knew that
9 Krasner and Barney had shortshipped materials to Hartz
10 Mountain.

11 Now the government is going to proceed to offer
12 evidence regarding another alleged prior similar act on
13 the part of this defendant which relates to his employment
14 prior to being employed by Hartz Mountain 16 years ago.

15 The government claims that he was employed
16 by the Columbia Broadcasting Company prior to being
17 hired by Hartz Mountain and they are going to offer evi-
18 dence which it claims was a prior similar act.

19 Now again, as to that evidence, this defendant
20 is not charged in this case with any crime in connection
21 with that. The government claims, as I said, that it is
22 a prior similar act. Again, you may consider that evidence
23 and if you find that it occurred, you may consider it
24 only on the issue of the defendant's knowledge with respect
25 to the charges which are made in the indictment here, the

charge being that he knew of the illegal activity alleged here, he knew that there were short shipments being made to Hartz Mountain by the two witnesses who testified, Krasner and Barney.

All right. With those instructions then regarding those prior similar acts, do proceed.

(continued on next page)

1 cs2

Corey - cross

2 (At the side bar.)

3 THE COURT: Is this another prior similar
4 act?

5 MR. COONEY: No. He changed his name, your
6 Honor, at or about the time, as I understand it, he was
7 employed by CBS. I want to know why he changed his
8 name.

9 THE WITNESS: I'll tell you why.

10 THE COURT: You say he changed his name before
11 he went to work for Hartz Mountain, after he had been
12 employed?

13 MR. COONEY: No, he changed his name some time
14 when he was with CBS. I would like to know why he
15 changed his name.

16 THE COURT: That is not relevant unless it is
17 a prior similar act.

18 MR. COONEY: I will restrict myself to CBS
19 only. I would like to pursue it for two reasons.

20 One is the question of his purchasing depart-
21 ment activities.

22 THE COURT: I couldn't hear you.

23 MR. COONEY: I want to ask him about several
24 other areas during cross-examination. I don't know if
25 Mr. Corey should be here during the course of this dis-

cs3

Corey - cross

1
2 cussion, but I would like to know about his purchasing
3 department activities. I would like to know about his
4 dealings with Walter Schlessel, and I intend to ask him
5 about CBA.

6 THE COURT: You can ask him that, but the
7 charge of name -- I don't see the relevance of that.
8 He could have changed his name for a perfectly legitimate
9 reason.

10 MR. COONEY: If Mr. Corey will tell us now --

11 THE WITNESS: I'll be happy to tell you why
12 I chanved my name.

13 MR. COONEY: I'll take it and --

14 MR. ANOLIK: His daughter is unaware of the
15 change of name.

16 THE WITNESS: My daughter happens to be
17 unaware, she is unaware of the reason why did it, why I
18 changed it.

19 MR. COONEY: I'll take it up here.

20 THE WITNESS: I'll tell you. My wife was
21 married before I married her and she had a son by a
22 previous marriage. The father was still living and
23 I wanted to adopt my son, our son, and he would not allow
24 me to adopt her son with the name of Cohen, because he
25 has an Italian name. I don't know what it was. So

cs4

Corey - cross

473

1 that I changed My name to accommodate him so I could
2 adopt the boy. My son doesn't even know it. My daughters
3 don't. We are all one family, one unit.
4

5 THE COURT: How old are your children?

6 THE WITNESS: My son will be 30 years old.

7 THE COURT: When did you change your name?

8 THE WITNESS: When I first got married, 27
9 years ago.

10 THE COURT: You changed your name 27 years
11 ago?

12 THE WITNESS: Yes.

13 MR. COONEY: 27 years ago being 1950.

14 THE WITNESS: I don't remember the exact time,
15 but when we went for adoption of my son by a previous
16 marriage is when I changed my name.

17 THE COURT: Are there two sons?

18 THE WITNESS: No, only one son.

19 THE COURT: And that is from a previous
20 marriage?

21 THE WITNESS: Yes, that was the only purpose
22 of the name change. I have one son and two daughters.

23 MR. COONEY: My information, your Honor, is
24 that Mr. Corey changed his name late in the 1950's. I'm
25 not suggesting that it was to -- I didn't know about this.

cs5

Corey - cross

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1 If the Court wants to I'll not go into this. It is not
2 a major point.
3

4 THE COURT: I think maybe you'd better since
5 you began. I think since you have broached the subject
6 it would be better to go ahead with it.

7 THE WITNESS: I would like my daughter out
8 of the courtroom.

9 MR. COONEY: I have no difficulty with that.

10 THE WITNESS: That is all I'm asking.

11 THE COURT: She has heard it.

12 THE WITNESS: She only heard half of it. That
13 her brother is adopted, she doesn't know that.

14 THE COURT: What is the other reason?

15 THE WITNESS: It is important to me. The
16 other reason is that she doesn't know he is not my son.

17 MR. COONEY: I don't have any problem with
18 taking the jury out for a minute and then taking the family
19 out for a minute.

20 THE COURT: We will recess for a minute,
21 then.

22 (In open court.)

23 THE COURT: At this time we will have a brief
24 recess. Everyone in the courtroom will remain seated
25 until the jurors have left.

cs6

Corey - cross

(The jury left the courtroom.)

(Pause.)

THE COURT: Mr. Anolik, I gather you have taken care of the problem of having the daughter leave the room?

MR. ANOLIK: Yes.

THE COURT: Suppose we approach the bench again.

(At the side bar.)

THE COURT: Then with the daughter out of the room, as I have indicated, I think it would be better to go on with this.

MR. ANOLIK: I agree.

THE COURT: It would be more prejudicial to the defendant to let it drop rather than have him explain why he changed his name.

MR. ANOLIK: Quite true. I think so, your Honor.

MR. COONEY: I will be glad to ask.

(In open court with the jury present.)

BY MR. COONEY:

Q Mr. Corey, I asked you when you changed your name. Do you recall that question?

A Yes.

cs7

Corey - cross

Q Why did you change your name?

A My wife was married before and in her first marriage she had a son whose name was Gregory. Her first marriage was to a man named Capalbo. When my wife was divorced and we married I had decided I would like to adopt the boy and make him a part of the family. My lawyer at that time had spoken to her husband's, her ex-husband's lawyer and had spoken to her husband and he would never agree to my adopting the boy as long as I kept the name of Cohen. In order to accommodate him and to make the family unit one I changed my name to Corey and that is the whole mysterious part of that situation.

Q Me. Corey --

A The only other reason that I made the little to-do that I made --

Q I'm sorry.

A I'd like to finish this.

MR. COONEY: Your Honor, I don't think so.

THE COURT: Yes, your lawyer will bring out anything, Mr. Corey, that he thinks should be brought out on redirect.

THE WITNESS: All right.

Q Now, Mr. Corey, you told us that you began working for Hartz Mountain in March 1960?

cs8

Corey - cross

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1
2 A To the best of my recollection, yes.

3 Q Prior to the time that you worked for Hartz
4 Mountain, who did you work for?

5 A CBS.

6 Q What was your last position at CBS?

7 A I think I was assistant supervisor.

8 Q Of what?

9 A Data processing. Tabulating, I think they
10 called it at that time.

11 Q You were assistant supervisor of the tab
12 room?

13 A Yes.

14 Q Is that what they called it?

15 A Yes.

16 Q While you were at CBS was one of your super-
17 visors a man by the name of Kenneth E. Sanger?

18 A Yes.

19 Q Did there come a time when you were fired
20 from CBS?

21 A Yes.

22 Q Was that in February 1960; do you recall?

23 A Could very well have been.

24 Q About a month before you went to Hartz;
25 correct?

cs9

Corey - cross

1
2 A Yes.

3 Q And there were allegations made about your
4 conduct there; isn't that correct?

5 A Yes.

6 Q You were alleged to have --

7 MR. ANOLIK: I object to the declaratory
8 type of question. I think a question should be posed.

9 Q What allegations were made with respect to
10 your own conduct?

11 A I had overstated my overtime.

12 Q You in fact had overstated your overtime?

13 A Yes.

14 Q And did you also falsify a W-2 form?

15 A Yes.

16 Q What you had done, basically, was remove your
17 salary card from the Remington card computer; correct?

18 A I really don't remember doing that. I don't
19 remember exactly how it happened. It is a quite a long
20 time ago.

21 Q In any event, you had falsified the amount of
22 overtime that you earned at CBS?

23 A Yes.

24 Q And you admitted doing it?

25 A And I paid it back.

csl0

Corey - cross

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2 Q You were confronted by a man -- do you
3 remember Kenneth Sanger?

4 Did I ask you that?

5 A Yes, he was my supervisor.

6 Q And a man by the name of Sam Dean; do you
7 remember Sam Dean?

8 A No.

9 THE COURT: Is there an answer?

10 THE WITNESS: No, I do not remember him.

11 Q In your direct examination you told us that
12 at Harts Mountain Corporation the purchasing department
13 handled purchasing for your department?

14 A Correct.

15 Q You told us that they did that at least from
16 1972 on?

17 A When we got to Harrison that started.
18 I don't remember exactly when we got to Harrison.

19 Q Let's assume that is 1972.

20 From that time on you told us that they had
21 handled your purchasing; correct?

22 A I submitted purchase orders, I said.

23 Q To Mr. Schlessel, Walter Schlessel?

24 A To the purchasing department.

25 Q Did you submit those purchase orders before

csll

Corey - cross

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or after you purchased the goods?

A It would depend on what the emergency was for the goods.

Q There were occasions, in fact, when you had ordered the goods after, is that correct?

A Very possible.

Q You also told us this morning that you never went to Leonard Stern for permission to keep purchasing in your department?

A No.

MR. COONEY: Nothing else, your Honor.

REDIRECT EXAMINATION

BY MR. ANOLIK:

Q Mr. Corey, with respect to CBS, did you pay back every penny of that overtime?

A Yes.

Q And were any charges ever brought against you?

MR. COONEY: I object to that, your Honor. We are not offering this to show that Mr. Corey was ever charged with this activity. We only offered it on the issue of knowledge.

THE COURT: Yes.

MR. ANOLIK: Since he raised it, the jury

XX

1 csl2

Corey - redirect

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2 should be disabused of any idea of charges.

3 THE COURT: I think I pointed out the Govern-
4 ment claimed it was a prior similar act.

5 Q Is there anything else you wanted to say
6 with respect to the change of name?

7 A I said the only reason that I got upset at
8 the time was that my youngest daughter was in the court-
9 room and none of my children are aware -- I have two other
10 daughters from this marriage and neither of those two
11 girls are aware that their brother is not a blood brother.
12 This is a family unit and there is no -- we just never
13 wanted, my wife and I --

14 Q He has always been treated as your own son?

15 A He is kingpin.

16 Q Now, with respect to the RPC matter, what is
17 the name of that company, by the way?

18 A Record Processing Corporation.

19 Q Did any of the work you did for RPC prevent
20 you from doing work for Hartz?

21 A No.

22 Q Was any of the work that you did for them in
23 competition with Hartz?

24 A No.

25 Q And the party with whom you dealt at RPC, what

csl3

Corey - redirect

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1
2 was his name?

3 A William Halliday.

4 Q He was not the party who recommended the job
5 at Hartz to you, was he?

6 A No.

7 Q And the money that you got in the name of
8 David Con -- that is your company, right?

9 A Yes.

10 Q -- from RPC, was that deposited?

11 A Yes.

12 Q Was that declared in your income taxes?

13 A Yes.

14 Q Mr. Cooney asked you whether or not you were
15 a dictator in your department. Would you explain how
16 you ran your department?

17 A I had, as I said, about 55 people and I guess
18 you could call me a tough boss, but a fair boss. I was
19 tough, yes.

20 (Continued on next page.)
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3pm

hb:mg 1

Corey-redirect

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2 Q Did you ever indiscriminately fire an employee
3 because you didn't like him?

4 A No. Everything was gauged on work.

5 Q As a matter of fact, did you accept recom-
6 mendations of your own supervisors under you as to the
7 work performance of these employees?

8 A Positively.

9 Q You didn't -- you couldn't personally super-
10 vise each employee, did you?

11 A I didn't, except indirectly.

12 Q Now you were also asked a question about two
13 boxes that are not in evidence but were just marked for
14 identification.

15 Could you explain specifically whether or not
16 you can tell just from looking at the boxes, what the
17 quantities are?

18 A No, not unless I made a study.

19 Q Keep your voice up.

20 A Not unless I made a study of it. I most of
21 the time never noticed the labeling on boxes.

22 MR. ANOLIK: Your Honor, this is Exhibit 48
23 in evidence and 47 in evidence. I would like to offer
24 them in evidence.

25 MR. COONEY: I have no objection to their

1 hb:mq 26
2 MR. COONEY: I have nothing else.

3 RECCROSS-EXAMINATION

4 BY MR. ANOLIK:

5 Q Mr. Stern, if the matters that were the result
6 of this indictment had never been brought to your atten-
7 tion, would your opinion still be that he was a loyal
8 employee?

9 A Yes, sir.

10 MR. ANOLIK: I have no further questions.

11 THE COURT: Anything further?

12 MR. COONEY: Yes.

13 REDIRECT EXAMINATION

14 BY MR. COONEY:

15 Q So that when you discovered the matters
16 that are the subject of this indictment, you changed
17 your opinion?

18 A Yes.

19 MR. ANOLIK: I object.

20 MR. COONEY: That is exactly what the question
21 was.

22 THE COURT: Overruled.

23 Q Do you understand the question?

24 A This man worked for me for many years. Not
25 only did I have confidence in him, I trusted him. We had

1 hb:mg 27

Stern-redirect

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2 an association in business where my door was open to
3 him. I took his advice, I listened to what he said about
4 the areas where he had expertise, I didn't second-guess
5 him.

6 This was the last thing in my mind and until
7 the facts were brought to me, I would not have believed
8 that it was possible.

9 Today what I have seen and heard, I no longer
10 believe he is an honest man.

11 MR. ANOLIK: I ask for a mistrial at this
12 point, your Honor.

13 THE COURT: Do you want to approach the bench?

14 MR. ANOLIK: Yes, your Honor.

15 (At the side bar)

16 MR. ANOLIK: I have nothing but the greatest
17 respect for Mr. Stern. I am not impugning his integrity
18 at all. What I am saying, though, to put a man in the
19 position of giving a personal opinion that he no longer
20 believes in his honesty is usurping the function of the
21 jury and the calculated design to ask this question over
22 my repeated objections is so prejudicial that no instruc-
23 tion of your Honor, and I know your Honor will try to be
24 fair --

25 MR. COONEY: Please keep your voice down.

2 MR. ANOLIK: I am sorry.

3 No instruction of your Honor can possibly
4 ameliorate it and I ask for a mistrial.

5 MR. COONEY: Your Honor, this Mr. Anolik was
6 perfectly happy to solicit, the personal opinion of
7 this witness, when he felt that that his personal opinion
8 could be elicited in such a guarded and limited extent
9 that it would be helpful to the defendant.

10 Now he wishes to elicit that opinion, the view
11 of a man who is being defrauded, as to what the position
12 of this man -- his view of him while he was being de-
13 frauded. He did not want the view brought out, this
14 man's view, because his opinion has obviously changed.

15 Your Honor, it is ridiculous. The question
16 Mr. Anolik asked -- what was your view of this man at
17 the time he was defrauding you? It's ridiculous.
18 Mr. Anolik knew the door was open and now he is unhappy
19 with the response. If there is any unfairness, I
20 really am almost at the end on these statements about
21 fairness in front of the jury and Mr. Anolik has had
22 almost unlimited discovery in this case. He has had
23 all these exhibits marked.

24 THE COURT: Just a moment. Let's not get off
25 the point. The question is whether this is so prejudicial

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Stern

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to the defendant that he could not get a fair trial.

The Court's ruling is that it is not since his counsel opened the door to this by asking this witness for his personal opinion of the defendant while he was employed with him.

All right, let's proceed.

MR. ANOLIK: But he also asked him his belief as to the guilt or innocence.

MR. COONEY: No, I didn't.

MR. ANOLIK: He gave it, though.

THE COURT: I will ask the reporter if he can find that. I don't recall it. I believe the question was whether he had the same opinion after discovering these facts.

MR. ANOLIK: Read it back. I think he said, your Honor, that I no longer believe him to be an honest man, and that is an opinion well beyond anything that was reached.

Your Honor, there is a case, United States v. Gregory, where they say an evidential harpoon of this sort is reversible error.

THE COURT: Let me ask the reporter to find the last question.

(Record read)

MR. ANOLIK: That is where I move for the mistrial.

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THE COURT: Of course, in addition the new rules of evidence provide for opinion testimony by lay witnesses and this witness was asked to give his opinion based upon his knowledge of the defendant when he worked for him.

MR. ANOLIK: Not as to the guilt or innocence in this case, your Honor, of the defendant.

THE COURT: The answer is that he no longer regards him to be an honest man. He doesn't say "I believe him to be guilty of the crimes charged in this indictment."

MR. COONEY: There was testimony as to honesty of the opinion variety. Even if this were not a specious motion in the Government's view, the ultimate question was whether this man was a loyal employee while he worked for Hartz, and that is the question before the jury. I asked him whether he still regarded him as honest. He said he does not regard him as an honest man.

MR. ANOLIK: What happened to this presumption of innocence in this case when the Government deliberately elicits such things and the Government interjects by making the remark "We have checked this out."

THE COURT: The issue on this motion for a

cs2

Stern - recross

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mistrial is whether it was so prejudicial and I ruled previously that the defendant opened the door to this by questioning the witness as to his opinion of the defendant's honesty, and obviously the Government can go into it.

Let's proceed, gentlemen.

(In open court.)

MR. COONEY: I have nothing further.

THE COURT: Anything further?

MR. ANOLIK: Yes, your Honor.

RECROSS EXAMINATION

BY MR. ANOLIK:

Q Mr. Stern, when was the first time you knew you'd be a witness in this case?

A The first time I knew I was going to be a witness in this case?

Q Yes.

A I was called up this morning and asked if I could make time available today to come down and be a witness.

MR. ANOLIK: No further questions.

MR. COONEY: Nothing else, your Honor.

THE COURT: Thank you. You may come down.

(Witness excused.)

THE COURT: Do you have another witness?

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2 MR. COONEY: The Government rests.

3 MR. ANOLIK: The defendant rests.

4 THE COURT: All right.

5 We are goin to recess this case until 10 o'clock
6 tomorrow morning and at that time, ladies and gentlemen,
7 in view of the fact that both sides in this case have now
8 rested, the Court is going to proceed in the morning to
9 hear closing arguments from the lawyers on both sides,
10 after which the Court will charge the jury, and then after
11 that you will commence your deliberations, so plead bear
12 that in mind with respect to the procedure tomorrow.

13 We will begin in the morning with summations
14 from the lawyers on both sides followed by the Court's
15 charge to the jury, followed by your retiring to the jury
16 room to deliberate.

17 I want to caution you before you leave again
18 about discussing the case among yourselves. Remember
19 that I told you when the trial commenced you will not have
20 the whole case until you have heard the Court's charge
21 on the law and you retire to the jury to deliberate.
22 That is the only time you are permitted to discuss the
23 case among yourselves, so please do not discuss the case
24 among yourselves or with anyone else until you have
25 finally retired to the jury room to deliberate.

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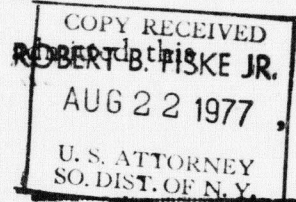
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ROBERT B. FISKE JR.

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Attorney for